

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 IN RE: LIONEL SAWYER & COLLINS,
5 LTD.

Case No. 2:17-cv-03076-APG-NJK

6 YVETTE WEINSTEIN, Chapter 7
7 Trustee,

**ORDER DENYING MOTION TO
WITHDRAW THE REFERENCE**

8 Plaintiff,

9 v.

(ECF No. 1)

10 DOMINIC MARROCCO,

11 Defendant.

12 Defendant Dominic Marrocco moves to withdraw the reference for this adversary
13 proceeding in the underlying bankruptcy case of debtor Lionel Sawyer & Collins, Ltd. ECF No.
14 1. Plaintiff Yvette Weinstein as the debtor's Chapter 7 Trustee filed an adversary proceeding
15 against Marrocco, asserting state law claims seeking to recover for unpaid legal bills that
16 Marrocco allegedly owes the debtor. ECF No. 6 at 4-7. Marrocco moves to withdraw the
17 reference over these non-core claims, arguing withdrawal will conserve judicial resources
18 because the adversary proceeding will require the bankruptcy court to issue proposed findings of
19 fact and conclusions of law subject to de novo review by this court, possibly followed by a jury
20 trial in this court. Weinstein opposes, arguing the motion is untimely and withdrawal will not
21 conserve judicial resources. Weinstein also argues Marrocco has impliedly consented to the
22 bankruptcy court's jurisdiction.

23 Local Rule of Bankruptcy Practice 5011(b) provides that a "motion to withdraw the
24 reference of an adversary proceeding, in whole or in part, must be served and filed on or before
25 the date on which the party enters its first appearance in the case."¹ Marrocco's counsel filed a
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27 ¹ The Trustee cites an old version of the Local Rules of Bankruptcy Practice of the United States
28 District Court for the District of Nevada.

1 notice of appearance on July 10, 2017, and Marrocco moved to quash service and for the
2 bankruptcy court to abstain from exercising jurisdiction on July 19. ECF No. 6 at 13, 17-26.
3 Marrocco thus first appeared in the case no later than July 19. Marrocco did not file the motion to
4 withdraw the reference until December 18. ECF No. 1. Even if I considered Marrocco's motion
5 to transfer venue as a motion to withdraw the reference, that motion was filed on October 18, well
6 after Marrocco had first appeared the case. ECF No. 6 at 36-40. Consequently, I deny this motion
7 as untimely.

8 IT IS THEREFORE ORDERED that defendant Dominic Marrocco's motion to withdraw
9 the reference **(ECF No. 1) is DENIED.**

10 DATED this 6th day of February, 2018.

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14 ANDREW P. GORDON
15 UNITED STATES DISTRICT JUDGE
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